BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

MARVIN LEE HARTMAN Claimant	)	
VS.	)	
PYLE, INC. Respondent	)	Docket No. **1,047,611**
AND	)	
CORNHUSKER CASUALTY CO. Insurance Carrier	)	

ORDER

Respondent and its insurance carrier request review of the January 26, 2010 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

The Administrative Law Judge (ALJ) found claimant's accidental injury arose out of and in the course of employment and that he provided respondent timely notice of the accident. The ALJ ordered respondent to reinstate claimant's temporary total disability compensation and authorized medical treatment with Drs. John Fan and Shelly McDaniel.

Respondent requests review of whether the ALJ erred in finding claimant's accidental injury arose out of and in the course of employment with respondent.

Claimant argues the ALJ's Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Marvin Hartman started working in 1996 as a carpenter, iron worker and general laborer for Pyle, Inc., a construction company. His job duties included building churches

metal buildings and roofing. Claimant described his accident that happened on April 7, 2009, as follows:

> I was repairing a steeple, and it was a 10/12, or greater roof pitch, so we were using a rope to get to the top of the roof. And as I was climbing to the top of the roof, I started having trouble due to a tool in my hand, so I stopped and started to back down, as I backed down, I slipped and fell.[1]

Claimant fell ten feet to a lower pitched roof that was attached to the steep roof. Later that morning he had a telephone conversation with Edwin T. Pyle Jr., respondent's owner, and told him he had fallen. He continued to work and finished out his work day. He worked a full day on Thursday and was at work on Friday when he started feeling needle-like symptoms in his fingertips and numbness to his legs and fingers. Claimant also had a burning sensation down his spine as well as being sore and stiff. He left early from work due to his symptoms which remained the same over the course of the weekend. Then on Monday, claimant was experiencing numbness, neck ache and a headache.

On April 23, 2009, claimant sought medical treatment at Same Day Care upon a referral from respondent. X-rays were taken, pain medication was prescribed and claimant was referred to Dr. Theode. Dr. Theode prescribed pain medication, took x-rays and recommended claimant be evaluated by Dr. Matthew Pouliot. All of claimant's tests, MRIs of the brain and CT scans were normal. But after examination and evaluation, Dr. Pouliot diagnosed claimant with a mild to moderate traumatic brain injury. The doctor ordered physical therapy, prescribed Ritalin and Amitrasilyn as well as speech therapy. Due to Dr. Pouliot leaving town Dr. John G. Fan continued treating claimant.

On cross-examination, claimant testified:

> Q. In fact, you've never told any doctor that you had suffered any type of head injury in this incident, correct?
>
> A. Correct.
>
> Q. In fact, if we look at all of the doctors' reports, you have denied to every doctor that you've seen that you ever hit your head, true?
>
> A. Until Matthew Pouliot diagnosed me with head trauma.[2]

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[1] P.H. Trans. at 9.

[2] P.H. Trans. at 27-28.

Edwin T. Pyle Jr., respondent's owner, testified that he asked claimant whether or no not he fell on his back, head or side. Claimant responded that he couldn't recall because it happened so fast.

Ralph R. Busby, building facilitator for Northridge Friends Church, testified that he did not observe claimant sliding from the steeple to the flat roof. He further testified:

> Q. At any point while Mr. Hartman was there performing this job from start to finish, did he ever tell you that he had injured himself?
>
> A. No, he did not.[3]

But Mr. Busby did agree that he saw claimant slip on the roof on one occasion and he further noted there were a couple of times when he left the work area and was gone getting tools and some bolts and nuts.

Shelley McDaniel, Ph.D., a licensed psychologist and neuropsychologist, reported that claimant's memory pattern and reported symptoms are typical of a head injury with slow intracranial bleed. And she concluded she would not rule out a small hemorrhage in the brain even though the MRI was reportedly normal. Conversely, Lyle E. Baade, Ph.D., evaluated and tested claimant and concluded claimant's findings were disproportional with the lack of findings on either the CT or MRI of the head. Consequently, Dr. Baade reported with a reasonable degree of neuropsychological certainty that claimant was exaggerating his symptoms and or malingering.

A claimant in a workers compensation proceeding has the burden of proof to establish by a preponderance of the credible evidence the right to an award of compensation and to prove the various conditions on which his or her right depends.[4] A claimant must establish that his personal injury was caused by an "accident arising out of and in the course of employment."[5] The phrase "arising out of" employment requires some causal connection between the injury and the employment.[6] The existence, nature and extent of the disability of an injured workman is a question of fact.[7] A workers compensation claimant's testimony alone is sufficient evidence of the claimant's physical

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[3] Busby Depo. at 14.

[4] K.S.A. 2008 Supp. 44-501(a); *Perez v. IBP, Inc.*, 16 Kan. App. 2d 277, 826 P.2d 520 (1991).

[5] K.S.A. 2008 Supp. 44-501(a).

[6] *Pinkston v. Rice Motor Co.*, 180 Kan. 295, 303 P.2d 197 (1956).

[7] *Armstrong v. City of Wichita*, 21 Kan. App. 2d 750, 907 P.2d 923 (1995).

condition.[8] The finder of fact is free to consider all the evidence and decide for itself the percent of disability the claimant suffers.[9]

The claimant slipped on a steep roof while performing his job duties. He mentioned the fall in a conversation with his employer but because it had happened so suddenly he simply could not recall the details. He also thought the incident was witnessed by a maintenance man for the facility where he was working. That maintenance man recalled claimant slipping but did not think it was a sufficient incident to cause injury. But the maintenance man agreed there were time periods that he was gone and not watching claimant perform the repairs to the church steeple. Claimant admitted he did not state he had injured his head in the fall, but again, the incident happened so quickly he did not recall exactly how he fell.

Respondent argues that the witness did not corroborate claimant's testimony that the slip and fall was witnessed. However, the claimant simply testified that he thought the maintenance man witnessed the incident. And the maintenance man did testify that he saw claimant slip while on the roof but he did not think that incident was sufficient to cause injury.

The claimant has consistently detailed that he slipped and fell while on the roof. Shortly after the incident he told his employer. He has consistently detailed the gradual onset of symptoms after the incident. Claimant was diagnosed with a traumatic brain injury. Based upon the record compiled to date this Board Member finds claimant has met his burden of proof that he suffered accidental injury arising out of and in the course of his employment and provided timely notice to the respondent.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.[10] Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2009 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.[11]

WHEREFORE, it is the finding of this Board Member that the Order of Administrative Law Judge John D. Clark dated January 26, 2010, is affirmed.

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[8] *Hanson v. Logan U.S.D. 326*, 28 Kan. App. 2d 92, 11 P.3d 1184 (2000), *rev. denied* 270 Kan. 898 (2001).

[9] *Carter v. Koch Engineering*, 12 Kan. App. 2d 74, 76, 735 P.2d 247, *rev. denied* 241 Kan. 838 (1987).

[10] K.S.A. 44-534a.

[11] K.S.A. 2009 Supp. 44-555c(k).

IT IS SO ORDERED.

Dated this 30th day of April 2010.

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HONORABLE DAVID A. SHUFELT
BOARD MEMBER

c: Melinda G. Young, Attorney for Claimant
Ronald J. Laskowski, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge